

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

ANTHONY LEON SUMMERS

§

VS.

§ CIVIL ACTION NO. 1:05cv452

STATE OF TEXAS

§

**MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner Anthony L. Summers, an inmate confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the petition.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed a motion to add evidence which the court liberally construes as objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. Petitioner's habeas claims are repetitious of earlier cases. Further,

petitioner may not pursue his civil rights claims because he has not paid the filing fee and his allegations do not demonstrate that he is in imminent danger of serious physical injury.¹

ORDER

Accordingly, petitioner's objections (document no. 9) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

So **ORDERED** and **SIGNED** this **10** day of **November, 2005**.



Ron Clark, United States District Judge

¹ Because at least three of petitioner's prior lawsuits or appeals have been dismissed as frivolous, he may not proceed *in forma pauperis* unless he was in imminent danger of serious physical injury at the time he filed this lawsuit. 28 U.S.C. § 1915(g); *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).